

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MELISSA M.

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2010100181

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California, on March 10, 2011.

Debra Martinez, Consumer Services Representative, Inland Regional Center, represented the service agency, Inland Regional Center.

Margie Thompson, an employee of Independent Living Systems, Inc., represented the claimant, Melissa M.

The matter was submitted on March 10, 2011.

SUMMARY

Regional center provides claimant with a coach to teach claimant independent living skills (skills coach). Regional center, without claimant's consent and without complying with statutorily required procedures, reduced the number of coaching hours.

In this decision, it is determined that the regional center must reinstate the hours and must compensate claimant for the hours withheld in violation of statutory requirements.

FACTUAL FINDINGS

1. Claimant, Melissa M., is a regional center consumer. She is diagnosed with mild mental retardation. She lives independently in a supported living arrangement. One of the supports the regional center provides is a skills coach to help claimant learn to live independently. The skills coach is provided through Independent Living Systems, Inc., a regional center vendor.

2. Idalia Villarreal is a consumer services coordinator for the regional center. Ms. Villarreal has been claimant's service coordinator since February of 2008. Cynthia Alexander is a program manager with the regional center.

3. Ms. Villarreal and Ms. Alexander became concerned that claimant's skills coach may have been providing direct care services rather than providing training. They became concerned that the skills coach may have provided transportation services and housekeeping services. In an annual individual program plan (IPP) review meeting in July of 2010, Ms. Villarreal decided to reduce the number of claimant's coaching hours.

4. Claimant did not consent to the reduction. Betty Canez, who is claimant's skills coach, attended the July 2010 IPP review meeting. Ms. Canez testified that the atmosphere in the meeting was intense and that she felt intimidated. She said she understood that the regional center intended to cut claimant's hours, but Ms. Canez did not agree that the hours should be cut. Claimant testified that it was some time after the meeting that she first understood that the regional center planned to cut her hours; Ms. Canez told her. Ms. Alexander, who attended the meeting, testified that she did not recall claimant agreeing to a reduction in her hours. Jennifer Cummings was the Acting Program Manager for Fair Hearings and Legal Affairs for the regional center. Ms. Cummings wrote a letter dated November 24, 2010, to claimant in which Ms. Cummings said, "Because you stated that you were in agreement with the reduction in ILS hours at the planning meeting, IRC was not required to send a notice of action or 30 day notice to reduce the services." Ms. Cummings was not present at the meeting, and there was no evidence as to why she concluded that claimant agreed to a reduction of her hours. Claimant's agreeing or failing to agree was a critical matter in the meeting. If she had agreed to a reduction in her services, surely Ms. Alexander would have remembered that. It is found that claimant did not consent to the reduction in hours.

5. The evidence is in conflict as to the exact number of hours specified in claimant's IPP and the extent of the reduction. Carmelita S. De La Cruz, a regional center program manager, wrote a letter dated November 15, 2010, to Margie Thompson. According to that letter, claimant was receiving 60 hours per month of services before the reduction and 15 hours after the reduction.¹

¹ Ms. De La Cruz wrote about a denial of a request to "reinstate 45 hours per month" and the fact that "the current authorization is 15 hours per month" Thus, the number of hours before the reduction must have been 60.

LEGAL CONCLUSIONS

Claimant has a Right to Reinstatement of Her Prior Level of Support

1. The Lanterman Disabilities and Services Act, beginning at section 4500 of the Welfare and Institutions Code, governs the rights of regional center consumers.

2. If a regional center proposes to reduce a service it is providing pursuant to a consumer's IPP and if the consumer does not consent to the reduction, the regional center may not reduce the service without complying with a number of procedures designed to protect the consumer's rights. The regional center must serve the consumer with a notice of the proposed reduction. Welfare and Institutions Code section 4710, subdivision (a)(1), provides, in part:

Adequate notice shall be sent to the . . . [service] recipient . . . by certified mail at least 30 days prior to any of the following actions: (1) The agency makes a decision without the mutual consent of the service recipient . . . to reduce . . . services set forth in an individual program plan.

3. The Lanterman Act defines "adequate notice" as a "written notice." Merely talking with a consumer about a proposed reduction does not satisfy the statutory requirement. The definition specifies numerous matters that must be included in the writing. It must include a statement of the action proposed, the reason, the effective date, information about how to appeal, and information about advocacy assistance. And the notice must include information about how the consumer can obtain *aid paid pending*, i.e., how the consumer can continue to receive the existing level of services until after a fair hearing is held. Welfare and Institutions Code section 4701 provides, in part:

"Adequate notice" means a written notice informing the . . . recipient . . . of at least all of the following:

- (a) The action that the service agency proposes to take, including a statement of the basic facts upon which the service agency is relying.
- (b) The reason or reasons for that action.
- (c) The effective date of that action.
- (d) The specific law, regulation, or policy supporting the action.
- (e) The responsible state agency with whom a state appeal may be filed, including the address of the state agency director.

(f) That if a fair hearing is requested, the claimant has the following rights:

- (1) The opportunity to be present in all proceedings and to present written and oral evidence.
- (2) The opportunity to confront and cross-examine witnesses.
- (3) The right to appear in person with counsel or other representatives of his or her own choosing.
- (4) The right to access to records pursuant to Article 5 (commencing with Section 4725).
- (5) The right to an interpreter.

(g) Information on availability of advocacy assistance, including referral to the developmental center or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. Sec. 6000 et seq.).

(h) The fair hearing procedure, including deadlines, access to service agency records under Article 5 (commencing with Section 4725), the opportunity to request an informal meeting to resolve the issue or issues, and the opportunity to request mediation which shall be voluntary for both the claimant and the service agency.

[¶] . . . [¶]

(n) That if a request for a fair hearing by a recipient is postmarked or received by a service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, *current services shall continue as provided in Section 4715*. The notice shall be in clear, nontechnical language in English. If the claimant or authorized representative does not comprehend English, the notice shall be provided in such other language as the claimant or authorized representative comprehends. (Italics added.)

4. Even if a consumer misses the deadline for securing aid paid pending, he or she is entitled to a hearing if a request is filed within 30 days. Welfare and Institutions Code section 4710.5, subdivision (a), provides, in part:

Any . . . recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be . . . not in the recipient's . . . best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing.

5. In the present case, the regional center failed to comply with these statutory requirements.

6. The regional center must reinstate the 60 hours per month of independent living services. Also, the regional center must compensate claimant for depriving her of aid paid pending. The evidence as to exactly when the regional center began withholding hours is not clear. If for example, it began withholding hours the first of August of 2010, it owes claimant approximately 360 hours. The regional center shall calculate the number of hours it has withheld and shall bank that number of hours and allow claimant to draw down on them over the next 12 months if she feels she needs extra assistance during that time.

The Present Proceeding Does Not Satisfy the Requirement that Claimant be Provided a Fair Hearing

7. As noted above, Welfare and Institutions Code section 4701 gives a consumer a right to adequate notice of a great number of things. A consumer has a right to a statement of the basic facts on which the service agency is relying in proposing a reduction in services and the reason for the proposed action. When a consumer appeals, a regional center must provide a consumer with information on the availability of advocacy assistance, including referral to the developmental center or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602. In the present case, there was no notice of proposed action, and regional center offered no evidence that it provided these statutorily required notices.

8. In claimant's appeal, i.e., in her fair hearing request, she designated Ms. Thompson and Ms. Canez to represent her.

9. Ms. Thompson and Ms. Canez work for Independent Living Systems, Inc., a regional center vendor, i.e., a corporation that holds a contract with regional center to provide services for it.

10. In addition to Ms. Thompson and Ms. Canez's working for a corporation that holds a contract with regional center, there is the matter of training and expertise. There was no evidence that Ms. Thompson or Ms. Canez has expertise in providing representation. The clients' rights advocate, the area board, and protection and advocacy are resources for not only representatives who are independent but also for representatives who are trained to provide representation. The Lanterman Act requires that a regional center advise claimants who appeal as to where the claimant can go to try to obtain a *trained, independent* representative.

11. Moreover, by failing to provide claimant with a statement of the basic facts on which the regional center was relying and the reason for the proposed action, regional center failed to give her essential information. That information is essential for preparing an appeal – for, among other things, deciding what witnesses to call, what facts to elicit from witnesses, and what matters to cover on cross examination.

12. By failing to provide claimant with the statement of facts to which she was entitled and by failing to provide her with information about the availability of trained, independent representation, regional center placed claimant at an extreme disadvantage. Thus, claimant has not received the fair hearing to which she is entitled.

Services that May be Appropriate to Support Independent Living

13. Because it is in everyone's interest to try to avoid another hearing, a few words are in order concerning what services may be appropriate to support independent living. No implication is intended that claimant is entitled to these services. Whether she is entitled to any of them must be determined through the IPP process.

14. The Lanterman Act endorses the provision of support for independent living when that is appropriate for a consumer. Welfare and Institutions Code section 4501 provides, in part:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge.

¶ . . . ¶

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community.

¶ . . . ¶

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, *including supported living* In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, *including, but not limited to, where and with whom they live*, their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation.

¶ . . . ¶

It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more *independent*, productive, and normal lives for the persons served.² (Italics added.)

15. The Lanterman Act is replete with provisions that elaborate on the nature of the services and supports to which developmentally disabled persons are entitled. Welfare and Institutions Code section 4502 provides, in part:

Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals

¶ . . . ¶

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

(a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward

² Welf. & Inst. Code, § 4501.

the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

(b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

(c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to social interaction and participation in community activities.

(g) A right to physical exercise and recreational opportunities.

(h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.

(i) A right to be free from hazardous procedures.

(j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.³

16. Welfare and Institutions Code section 4502.1 provides, in part:

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to,

³ *Id.* at § 4502.

regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decision-making skills in any aspect of day-to-day living⁴

17. It is possible that Independent Living Systems, Inc., is not an appropriate vendor to provide services other than skills coaching. It also is possible that Independent Living Systems, Inc., is an appropriate vendor to provide other services but that the services should be provided by someone other than a skills coach. As noted above, it also is possible that claimant is not entitled to other services. It is not true, however, that other services never are appropriate to support a consumer in independent living. Many other services may be appropriate as support for independent living.

18. It may be appropriate to provide *training* to help a consumer learn personal care, domiciliary care, daily living skills, homemaking, travel skills, and other things. *But when a consumer has not yet learned these things or when a consumer cannot learn these things, it may be appropriate for a regional center to provide the service instead of or in addition to training.*

19. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. *The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process.* The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. *Services and supports listed in the individual program plan may include, but are not limited to . . . personal care . . . domiciliary care, special living arrangements . . . follow-along services . . . habilitation; homemaker services . . . supported living arrangements;*

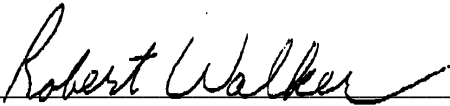
⁴ *Id.* at § 4502.1.

technical and financial assistance . . . and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (Italics added.)

ORDER

1. The regional center shall reinstate the 60 hours per month of independent living services.
2. The regional center shall compensate claimant for depriving her of aid paid pending. The regional center shall calculate the number of hours it withheld and shall bank that number of hours and allow claimant to draw down on them over the next 12 months if she feels she needs extra assistance. These compensatory hours shall not be used to reduce the hours to which claimant otherwise is entitled.

DATED: April 14, 2011


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

Notice:

This is the final administrative decision in this matter. Each party is bound by this decision. If a party chooses to appeal, an appeal from this decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf.& Inst. Code, § 4712.5, subd. (a).)